

JOHN W. COTTON (SBN 54912)
Email: JCotton@gghslaw.com
GARTENBERG, GELFAND & HAYTON LLP
15260 Ventura Blvd., Suite 1920
Sherman Oaks, CA 91403
(213) 542-2100
(818) 292-0898

Counsel to Former Receiver, Sherwood
Partners, Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN B. BIVONA; SADDLE RIVER
ADVISERS, LLC; SRA MANAGEMENT
ASSOCIATES, LLC; FRANK GREGORY
MAZZOLA

Defendants.

Case No. 3:16-cv-1386

**FORMER RECEIVER'S
ADMINISTRATIVE
APPLICATION FOR AN
ORDER PURSUANT TO
LOCAL RULE 7-11 FOR THE
APPROVAL OF FEES FOR
THE PERIOD JANUARY 1
TO MARCH 31, 2019, FOR
THE FORMER RECEIVER
AND COUNSEL**

Date: June 27, 2019

Time: 1:30 PM

Courtroom: 5

Judge: Edward M. Chen

**APPLICATION FOR PAYMENT OF FORMER RECEIVER AND ITS
COUNSEL'S FEES**

I. Background

On October 11, 2016, this Honorable Court issued an Order of Appointment of Receiver (the "Order") and thereby appointed Sherwood Partners, Inc. ("Sherwood") as Receiver in this matter. However, as the Court is aware, on February 28, 2019, it substituted the new Receiver, Kathy Phelps Esq., for Sherwood. The previous Order also appointed John

1 W. Cotton ("Cotton") of Gartenberg, Gelfand & Hayton LLP as Counsel to
 2 the now former Receiver, Sherwood. Previously, Sherwood and its
 3 counsel submitted interim applications for fees and expenses for the time
 4 periods October 11, 2016, to March 31, 2017 (See: Docket Nos. 207 and
 5 215, First Quarterly Fee Application filed on July 13, 2017, and approved
 6 on July 25, 2017 and August 11, 2017); April 1 to June 30, 2017 (See:
 7 Docket No. 275, Second Quarterly Fee Application filed on October 19,
 8 2017 and approved, but with a 20% holdback for Sherwood on *both* the
 9 first (retroactive) and second fee applications, on November 16, 2017);
 10 July 1 to September 30, 2017 (See: Docket No. 303, Third Quarterly Fee
 11 Application, filed on December 26, 2017 and approved by the Court on
 12 January 25, 2018); October 1 to December 31, 2017 (See: Docket No. 315,
 13 Fourth Quarterly Fee Application, approved by the Court on March 13,
 14 2018); January 1 to March 31, 2018 (See: Docket No. 387, Fifth Quarterly
 15 Fee Application, approved by the Court on August 2, 2018, but with an
 16 additional hold-back of 10% or \$7,507) and April 1 to June 30, 2018 (See:
 17 Docket No. 413, Sixth Quarterly Fee Application, approved by the Court on
 18 October 23, 2018, but with an additional hold-back of 50% or \$35,888.58);
 19 the Seventh Quarterly Fee Application, July 1 to September 30, 2018,
 20 approved by the Court on December 13, 2018, but with an additional hold-
 21 back of 30% or \$21,256.01, and October 1 to December 31, 2018, the
 22 Eighth Quarterly Fee Application filed on April 12, 2019 and approved by
 23 the Court on April 25, 2018, with an additional holdback of 20% or
 24 \$7,068.39

25 The total fees and expenses of the Sherwood approved by the Court to
 26 date total \$717,715.92 ¹ and the total fees and expenses of the former

27 _____
 28 ¹ This amount is exclusive of the amount paid to Sherwood for work performed
 during the period March to October, 2016, \$203,925.53, when it acted as

Receiver's counsel approved by the Court and paid to date are \$256,232.22 . The total fees and expenses of Sherwood being requested in this Ninth Quarterly Application (the "Application") are \$17,716.14, as set forth in Sec. II below. The total fees and expenses of the Sherwood's counsel requested in this Application are \$6,315.00, as set forth in Sec. III below.

In this Application, Sherwood through Georgiana Nertea ("Nertea"), requests that this Court approve its Ninth Quarterly fees and expenses as well as that of its Counsel, for the time period January 1 to and including March 31, 2019. The Application consists of the accompanying Declaration of Nertea, the time records of Sherwood (Exhibit A to the Declaration of Nertea), a narrative of the work performed by Sherwood (Exhibit B to the Declaration of Nertea) and the SEC's Standard Fund Accounting Report ("SFAR", Exhibit C to the Declaration of Nertea). The former Receiver also requests approval for the fees of its counsel, John W. Cotton for the same time period. The Declaration of John W. Cotton with accompanying billing statements from his firm (Exhibit A to the Declaration of Cotton) also accompanies this Application.

II. The Fee Application of Sherwood

As the Declaration of Nertea sets forth, the interim period for which it makes this Application is January 1, 2019 to and including March 31, 2019. During this time period, the personnel who worked on this matter, and their discounted hourly rates include Georgiana Nertea (at a \$295 regular billing rate and a \$195 reduced billing rate). Sherwood's total charge for time and disbursements in this interim fee request is

Independent Monitor. The Court ordered holdbacks to the former Receiver's approved fee applications, which currently total \$144,627.51 and have not been paid to the former Receiver.

1 \$17,716.14. . This represents a total of 59.80 hours, or 19.9 hours per
 2 month. Nertea Decl. at ¶ 3.

3 Sherwood has applied a 15% reduction to its standard rate. Nertea
 4 Decl., at ¶ 3. Nertea has personally reviewed all the time spent by
 5 Sherwood personnel on Receivership tasks and has attested to the
 6 accuracy and appropriateness of the time billed and has set forth the
 7 major work categories in which time was spent. Nertea Decl., at ¶4.
 8 Finally, Nertea has prepared the required SEC Standard Fund Accounting
 9 Report, or “SFAR”, for the period of January 1 to February 28, 2019. Nertea
 10 Decl., at ¶ 5.

11 Nertea has broken down the total billed hours to the following
 12 organized task categories: Asset management (0.0 hours); Investor and
 13 Creditor relations (.90 hours); Investors’ Group Communications (0.0 hours)
 14 Records Management (0.70 hours); Case Support and Administration
 15 (54.40 hours); SEC support (3.00 hours); Claims and litigation (.80 hours);
 16 Solis Funds Associates, LLC (0.0 hours); and Tax Related Matters (0.0
 17 hours) Nertea Decl., at ¶ 4.

18 **III. The Fee Application of Sherwood’s Counsel**

19 As the Declaration of John Cotton of Gartenberg, Gelfand & Hayton
 20 (“GG&H”) sets forth, the period for which it makes its Ninth interim fee
 21 application is January 1 to and including March 31, 2019. All the time
 22 spent on Receivership legal matters were undertaken by Cotton alone, at a
 23 reduced billing rate of \$450 an hour. GG &H’s total charge for time
 24 (\$5,940.00) and disbursements (\$375) in this Application is \$6,315.00.
 25 This represents a total of 13.20 hours, or 4.40 hours per month. Cotton
 26 Decl. at ¶ 3. GG & H has applied a 15% courtesy reduction to its standard
 27 rate and has only used personnel appropriate to the level of work being
 28 undertaken. Cotton Decl., at ¶ 3. Cotton has personally reviewed all the

1 time spent on Receivership tasks and has attested to the accuracy and
 2 appropriateness of the time billed and has set forth the major work
 3 categories in which time was spent. Cotton Decl. at ¶¶ 4 to 6.

4 During the time period of this Application, the work performed
 5 by Cotton consisted of the following work categories: responding to and
 6 advising the Receiver (3.7 hours); responding to and meeting with the
 7 SEC concerning SRA IG investor group concerns and the Joint Plan of
 8 Distribution (2.7 hours); review, preparation of and filing court
 9 documents (3.1 hours); responding to and attending investor and
 10 Defendants' counsel calls and related questions (.80 hours); and handling
 11 issues and communications regarding Estate investments: Mongo DB,
 12 EAC, Practice Fusion, etc. (.50 hours) and communications with the new
 13 Receiver (2.40). Cotton Declaration at ¶ 4.

14 15 **IV. The SEC Has Reviewed the Accompanying Fee Invoices**

16 Sherwood and its counsel timely submitted their
 17 accompanying fee applications to the Plaintiff SEC for its initial review in
 18 April 2019. As a result of the foregoing, the SEC has indicated that it has
 19 no objection to the fees now applied for in this Application, for either
 20 Sherwood, or its counsel. Counsel for Sherwood has obtained the
 21 approval of the newly appointed Receiver Kathy Phelps, Esq., and all
 22 interested parties' counsel to the use of L.R. 7-11 for this fee application
 23 and none have stated any objection to this Application.

24 **V. Conclusion**

25 For the forgoing reasons, Sherwood and its counsel request that the
 26 Court approve the Application for Ninth Quarterly Fees by signing the
 27 attached Proposed Order.
 28

1 Dated: June 11, 2019

GARTENBERG GELFAND HAYTON
LLP

3 By: /s/ John W. Cotton

4 John W. Cotton
5 Counsel to the Receiver
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